

NTSB Order No.
EM-153

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D. C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.
on the 19th day of April, 1989

PAUL A. YOST, Commandant, United States Coast Guard,

v.

WILLIAM L. LETT, Appellant.

Docket: ME-136

ORDER DISMISSING APPEAL

The Commandant, citing Commandant v. Leskinen, NTSB Order EM-59 (1977) and Commandant v. Schuiling, NTSB Order EM-109 (1984), has moved to dismiss the appeal filed in this proceeding on the ground that the Board lacks jurisdiction to review the order of admonition the appellant seeks to challenge. We will grant the motion.¹

Appellant concedes in his answer to the motion that the Board has held in the above-cited cases that it lacks authority to review orders of admonition, since such orders are not listed among those that the Board in 49 USC §1903(a)(9)(b) is specifically authorized to review. Appellant does not agree, however, that the fact that orders of admonition are not included in the Board's enabling statute precludes our jurisdiction over them. In this connection, appellant argues that the reason orders of admonition are not listed in the Board's statute is that the Coast Guard has no specific authority for such a sanction. We have previously rejected essentially this same argument.

In Commandant v. McAllister, NTSB Order EM-131(1986), we stated:

¹On February 17, 1988, a Coast Guard administrative law judge issued an order that admonished appellant for allegedly committing two violations of law by "permitting a non citizen who was unlicensed by the U.S. Coast Guard to serve as a deck watch officer" (id. at 12). That order was affirmed by the Vice Commandant (Appeal No. 2480) on January 21, 1989.

"If the Coast Guard's statutes do not contemplate orders of admonition, the Board's authority to review specific types of orders issued pursuant to those statutes could not have been intended to apply to them. If, on the other, orders of admonition are contemplated by the [Coast Guard] statutes though not mentioned, then the failure to list them among the orders subject to Board review reveals either an intent to exclude them from our review authority or an oversight we, of course, would be unable to remedy."

That reasoning is no less applicable in this case.

As we find no basis in appellant's response to the Commandant's motion for departing from precedent establishing that the Board lacks jurisdiction to review a Coast Guard order of admonition, we will grant the motion to dismiss.

ACCORDINGLY, IT IS ORDERED THAT:

1. The motion to dismiss is granted; and
2. The instant appeal is dismissed.

KOLSTAD, Acting Chairman, BURNETT, LAUBER, NALL and DICKINSIN, Members of the Board, concurred in the above order.